

Revised Uniform Law on Notarial Acts Workgroup

Meeting Minutes

Tuesday, August 13, 2019

Members in Attendance:

Assistant Secretary of State Kathy Smith; Toby Musser; Denise Pope; Ken Krach; Lydia Williams; Nick D'Ambrosia; Michael Kasnic; Ricky Adams; Bill O'Connell; Michael Chodos; Josaphine Yuzuik; Marquita Lewis; Michael Schlein.

Invited public attendee: Jeff Karberg, Director of the Identity Theft Unit, Office of the Attorney General.

Welcome:

Assistant Secretary Smith, called the meeting to order at 1:02P.M. She welcomed everyone to the sixth meeting of the Revised Uniform Law on Notarial Acts (RULONA) Workgroup.

Introductions:

Everyone at the meeting introduced themselves. Attendance was taken by Michael Schlein. A quorum was established.

Approval of Minutes from June 11, 2019

Assistant Secretary Smith asked the Workgroup members if everyone reviewed the July 9, 2019 minutes. Members acknowledged they did. She asked if there were any edits. No edits were suggested. Assistant Secretary Smith asked if there was a motion to approve the minutes. Nick D'Ambrosia made a motion to approve. Toby Musser seconded the motion. Assistant Secretary Smith asked the members to vote. The motion to approve the minutes passed unanimously.

Subgroup 1 Report:

Michael Schlein, reporting on behalf of Subgroup 1 leader Frieda McWilliams, reports that there is nothing to report since the previous meeting.

Subgroup 2 Report:

Subgroup 2 Reporter, Michael Kasnic, summarized their work. The subgroup reported their beliefs on all topics that they were tasked to cover:

1. Funding is necessary. The Secretary of State does need to be funded to implement the new law and should obtain it using the budget process since it cannot be legislated.
2. Notary to charge a higher fee for service. Notaries Public should be allowed to charge a higher fee for both remote and in-person notarizations; the subgroup believes the \$25 fee listed in the original bill draft was a fair amount.
3. Compliance with the law regarding data breaches. The subgroup believes SB678 satisfactorily addresses this topic.
4. Better defining proper identification. The subgroup believes SB678 satisfactorily addresses this topic.
5. Better define the requirement to keep a register. The subgroup believes SB678 satisfactorily addresses this topic.

6. Increase the notary application fee. The de facto cost to become a notary will increase because of the requirement of testing/education. However, the Secretary of State, is unable to increase the application fee itself.
7. Protection from rogue notaries. The subgroup has wrestled with this topic and struggled to come to a consensus. The subgroup believes that the Secretary of State can use regulations to react to issues as they are encountered.

Assistant Secretary Smith asked for clarification on who can charge a higher fee for notarizations.

Mike Kasnic: The subgroup believes \$4 per notarization is an inadequate fee; that a notary should be allowed to charge up to \$25 per notarization. The increase to \$25 covers costs associated with being a remote notary. The subgroup does not believe there should be two separate fees for a traditional or remote notary.

Ken Krach: The law should not disadvantage the traditional notary by having a lesser price they can charge; especially for those traditional notaries that do travel to conduct a notarization.

Denise Pope: It is simpler to have only one fee that a notary can charge.

Assistant Secretary Smith: Asked for clarification on the rogue notary report; about the ability of the Secretary of State to react.

Mike Kasnic: The Secretary of State can react to creativity by rogue notaries by using the flexibility provided in the law to adopt regulations.

Assistant Secretary Smith: stated that the Office of the Secretary of State responds to complaints after they are reported. There is no mechanism to anticipate complaints.

Josaphine Yuzuik: Expressed concern for low income people that would have to pay a higher fee to have a document notarized. Asking a parent to pay \$25 for a traditional paper/pen notarization for a school field trip is too much.

Mike Kasnic: The market should assist with people being able to find cheaper notaries.

Assistant Secretary Smith: Gave an example of gas prices increasing as to how the market cannot always correct a situation.

Subgroup 3 Report:

Subgroup 3 Reporter, Toby Musser, summarized their work. The subgroup is continuing to discuss the following topics:

1. Data breaches/cybersecurity concerns: The subgroup believes that notaries must comply with the laws already on the books regarding data breaches and cybersecurity and cited the Maryland Personal Information Protection Act as a guide on how to do that.
2. Protection from rogue notaries: The Secretary of State should publish, in a standard format, a list of rogue notaries with their commission information. Then, it should be required of remote

notary technology vendors to check the website before allowing a notary to conduct a remote notarization. This can be done with some simple computer code that scans the Secretary of State website for names every time someone completes a remote notary.

Josaphine Yuzuik: The law should better identify/define terms in the law that are new to notaries to ensure compliance with the Maryland Personal Information Protection Act and its standards.

Assistant Secretary Smith: Asked for clarification on Toby Musser's comment about it being the responsibility of the remote notary technology vendor to check a list of rogue notaries.

Toby Musser: Confirmed that it should be required of the technology vendor to check the rogue notary list before allowing a remote notarization to occur. The only thing that the Secretary of State would have to do is publish a list of troubled notaries.

Jeff Karberg: The purpose of the Maryland Personal Information Protection Act is to notify victims of a data breach. The notification requirements are extensive and will be updated on 10/1/2019 because of legislative changes. Businesses that maintain data must notify the owner of data and cannot charge the owner of the data to obtain information about the data breach. The notice of a data breach must be sent to someone within 45 days. He encouraged all to read the statute. The full law can be found in the Commercial Law Article 13-3501 to 13-3508.

Assistant Secretary Smith: Asked for thoughts on protecting the notaries.

Jeff Karberg: Expressed concern about the public receiving a notice of a breach but not knowing if the letter is legitimate. The public must know how the information is being relayed to them because a person would know the notary but not the vendor where the data breach occurred.

Michael Chodos: Maryland's law on data protection is a gold standard law that requires data provides and the notary to reasonably store data. The Secretary of State can promulgate regulations to explain the notification process to a victim of a data breach and what the notification must include. He supports the law.

Jeff Karberg: People are upset that they did nothing wrong and are victims of a data breach. Many that receive the notification of a data breach believe it is a scam notification.

Assistant Secretary Smith: The world is moving fast. It is important to establish as much guidance as possible in regulations.

Subgroup 4:

Michael Schlein reported on behalf of Subgroup 4 Reporter, Kathie Connelly. The subgroup has recommendations on the following items:

1. Errors and Omissions Insurance. Should not be required.
2. Improve Recordkeeping. The subgroup is satisfied with the law. However, allowing a notary to keep a driver's license/identification card number would further support their recordkeeping. It could be encouraged by regulation or policy/guidance.

3. Adjust the notary application fee. The application fee cannot be increased at this time, however, the education/testing requirement will effectively do that.
4. Protect credible notaries. This law helps to some degree but the subgroup is unsure of any more specific measures to assist in this area.
5. Better guidance for a notary changing their name. Update the content in the Notary Handbook to make the process clearer.

Assistant Secretary Smith: Asked for clarification on raising the application fee. Does the increased fee a notary can charge cover the increased application cost?

Michael Schlein: It does.

Michael Chodos: Florida and Nevada put a course on their website and charge \$20-\$40. California bids the class to the National Notary Association. The National Notary Association charges \$30-\$70 to complete their class. One can check with the National Notary Association and United States Notary Association to see what fee is charged to take their classes.

Assistant Secretary Smith: Is it reasonable for traditional notaries to charge more to those on the fringes of society?

Questions/Comments:

Assistant Secretary Smith asked for any questions or comments from the RULONA Workgroup.

Toby Musser: When a breach happens, investigation must happen in good faith and be done in a reasonable time. Without wording requiring previous service/training to investigate data breaches, the Maryland Personal Information Protection Act has an unintentional loophole because businesses trust their local IT person's opinion even though the local IT person is not qualified to do the investigation.

Jeff Karberg: Acknowledged that is a real concern. A company must keep records of its investigation for three years. It is possible that someone would need to investigate the investigation. He asked if there was a way to make a notary get a third party data audit.

Toby Musser: The third party IT audit costs at least \$8,000 and can cost as high as \$30,000 to \$50,000. That would cripple an individual notary. Data breach is a complex issue that is unresolved.

Assistant Secretary Smith: Final instructions: Each subgroup was directed to continue their work and to be prepared to report final recommendations at the next meeting. Each subgroup leader was asked to submit their final recommendations via e-mail to Michael Schlein. Final recommendations will be compiled with recommendations previously submitted in the Final Report, which will be presented to the Secretary for his consideration.

Assistant Secretary Smith: Thanked Jeff Karberg for participating and for sharing his expertise and insights.

Adjournment:

Assistant Secretary Smith thanked everyone for their participation in the RULONA Workgroup. The meeting adjourned at 2:18P.M.